

Internal Revenue Service
North Atlantic Region

Department of the Treasury

Address any reply to:

Person to Contact:

Telephone Number:

Refer Reply to:

Date: APR 12 1995

Certified Mail

Gentlemen:

This is our Final Adverse Determination/Ruling Letter concerning your organization's request for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED], in [REDACTED].

The purposes for which the organization was formed are as follows:

- a) To meet the concerns of parents, relatives and other involved citizens for the continued well being and quality of life of the mentally handicapped after the death of the parent, relative or other involved person who had maintained an on going interest in the welfare of the mentally handicapped person; to serve to the best of its ability and within the limit of its resources in a Corporate Capacity as a surrogate parent or entity that is independent of state or federal agencies or other service providers that focus on the welfare of the many rather than welfare of the individual
- b) In order to fulfill the needs set forth in the foregoing paragraph, the primary purpose of the Association is to serve as a corporate trustee of the trusts established by the Association's members to provide supplemental care, maintenance, treatment, support, education, and recreation for the welfare of mentally handicapped beneficiaries of such trusts. In certain instances, on approval by the Board of Directors on a case by case basis, the Association may accept funds for the above stated purposes from other individuals, trusts or organizations on behalf of mentally handicapped individuals

The information submitted with your application Form 1023 indicates the following:

"The organization's primary activity is to administer, for an as of yet undetermined fee, individual trusts set up by parents or primary care givers for the welfare of their mentally retarded children. The trust management association also advises families regarding estate planning issues and assists in setting up a trust to enable the trustee to obtain services and represent family concerns."

The purposes as set forth in a copy of a Model trust submitted by your organization states that "the principle purpose of this Trust is to supplement, but not to supplant, what benefit and services the primary beneficiary may from time to time be eligible to receive by reason of age, disability or other factors, from federal, state and local governmental sources.... It's therefore, the intent and direction of the Settlers that the Trustee...pay to the beneficiary or apply on her behalf so much of the income therefore, and such portion of the principal thereof, as the Trustee in its sole discretion deems necessary and appropriate to provide the beneficiary with those benefits and services, and only those benefits and services which are not otherwise available to her from government sources as or when needed for her welfare."

The Model Trust submitted also described the following situations which would result in the termination of the Trust:

Situation 1: "...if in the judgment of the Trustee [the beneficiary] requires any service or placement for which she would qualify for assistance under any federal, state, or local governmental program but for the existence, size, or terms of this trust, and if the costs of such service or placement are such that would, if borne by the Trust, risk substantial depletion of the Trust and defeat of its supplemental and long-term purposes, the Trustee shall terminate the trust..."

Situation 2: "In the event of a permanent change of residency of the primary beneficiary, such that the Trustee determines that it cannot effectively or efficiently fulfill its responsibilities...the Trustee, may, in its discretion, either transfer the Trusteeship...; or in the event of failure to identify an appropriate successor trustee within a reasonable time, terminate the trust."

Situation 3: "The Trustee shall terminate the trust upon the death of the primary beneficiary...having in any event first divided and distributed the remainder of the principal and accumulated but unspent income of the Trust as follows:

A. 25% to such qualified exempt charitable organization or organizations deemed in the judgment of the Trustee to exemplify the purposes of [REDACTED], except that [REDACTED] may not itself be a beneficiary of the trust; and

B. The rest and remainder... [to designated relatives of the beneficiary] or...to the issue of the Settlers then living by right of representation."

Article (h) of the organization's Articles of Organization provides, in part, that the Association "may administer the disposal of any remainder of a trust to living family members and/or other organizations serving the mentally handicapped as provided in individual trust documents."

The dissolution clause as contained in your Articles of Organization provides in part, that "any assets of the Association (separate from assets held in representative or fiduciary capacity) that remain after providing for payment of all outstanding debt and other liabilities shall be transferred to [REDACTED] or to such similarly dedicated organizations created and operated solely for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code..."

The information submitted with your application also indicates that your organization will only agree to manage trusts with a minimum size of \$[REDACTED] for an as yet undetermined fee.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Revenue Ruling 72-369, 1972 - 2 C.B. 245 provides in Part that "An Organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under Section 501(c)(3) of the Code."

Revenue Ruling 66-259, 1966 - 2 C.B. 214 provides, in part, that "a trust which provides for the reversion of principal on termination to the creator does not qualify for exemption under Section 501(c)(3) of the Code."

Like the organization described in Revenue Ruling 72-369, your organization enters into agreements to furnish managerial and consulting services on a fee for service basis. Moreover, unlike the organization described in this particular Revenue Ruling, which provided services to exempt organizations, your organization provides Trust management services to its members who have created non-exempt trusts for the benefit of their mentally handicapped children. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

Like the organization described in Revenue Ruling 66-259, your organization provides managerial services for individual, non-exempt trusts, each of which provides for the reversion of principal and interest to the creator or descendants of the creator upon termination of the trusts. Trusts which retain a reversionary interest do not qualify for exemption under 501(c)(3) of the Code. Providing management services for non exempt trusts, that do not qualify for exemption under 501(c)(3) of the Code, is not an activity warranting exemption.

Accordingly, your organization does not qualify for exemption under Section 501(c)(3) of the Internal Revenue Code. Therefore, you are required to file Federal income tax returns on Form 1120 or 1041.

Contributions to your organization are not deductible under Section 170 of the Code.

If you decide to contest this determination under the declaratory judgment provisions of Section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.


As provided in Section 6104(c) of the Internal Revenue Code and applicable regulations, the appropriate State officials will be notified of this determination.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,


Commissioner

By:


Associate Chief
Boston Appeals Office

Internal Revenue Service
District Director

Department of the Treasury

SEP - 8 1992

Date: APR 23 1992

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] in [REDACTED].

The purposes for which the organization was formed are as follows:

a) To meet the concerns of parents, relatives and other involved citizens for the continued well being and quality of life of the mentally handicapped after the death of the parent, relative or other involved person who had maintained an on going interest in the welfare of the mentally handicapped person; to serve to the best of its ability and within the limit of its resources in a Corporate Capacity as a surrogate parent or entity that is independent of state or federal agencies or other service providers that focus on the welfare of the many rather than welfare of the individual

b) In order to fulfill the needs set forth in the foregoing paragraph, the primary purpose of the Association is to serve as a corporate trustee of the trusts established by the Association's members to provide supplemental care, maintenance, treatment, support, education, and recreation for the welfare of mentally handicapped beneficiaries of such trusts. In certain instances, on approval by the Board of Directors on a case-by-case basis, the Association may accept funds for the above stated purposes from other individuals, trusts or organizations on behalf of mentally handicapped individuals

The information submitted with your application Form 1023 indicates the following:

"The organization's primary activity is to administer, for an as of yet undetermined fee, individual trusts set up by parents or primary care givers for the welfare of their mentally retarded children. The trust management association also advises families regarding estate planning issues and assists in setting up a trust to enable the trustee to obtain services and represent family concerns."

The purposes as set forth in a copy of a Model trust submitted by your organization states that "the principle purpose of this Trust is to supplement, but not to supplant, what benefit and services the primary beneficiary may from time to time be eligible to receive by reason of age, disability or other factors, from federal, state, and local governmental sources.... It's therefore, the intent and direction of the Settlers that the Trustee...pay to the beneficiary or apply on her behalf so much of the income therefore, and such portion of the principal thereof, as the Trustee in its sole discretion deems necessary and appropriate to provide the beneficiary with those benefits and services, and only those benefits and services which are not otherwise available to her from government sources as or when needed for her welfare."

The Model Trust submitted also described the following situations which would result in the termination of the Trust:

Situation 1 "... if in the judgement of the Trustee the beneficiary requires any service or placement for which she would qualify for assistance under any federal, state, or local government program but for the existence, size, or terms of this trust, and if the costs of such service or placement are such that would, if borne by the Trust, risk substantial depletion of the Trust and defeat of its supplemental and long term purposes, the trustee shall terminate the trust"

Situation 2 "In the event of a permanent change of residency of the primary beneficiary, such that the trustee determines that it cannot effectively or efficiently fulfill its responsibilities...the Trustee, may in its discretion, either transfer the Trusteeship...; or in the event of failure to identify an appropriate successor trustee within a reasonable time, terminate the Trust."

Situation 3 "The Trustee shall terminate the trust upon the death of the primary beneficiary...having in any event first divided and distributed the remainder of the principal and accumulated but unspent income of the Trust as follows:

a) 25% to such qualified exempt charitable organization or organizations deemed in judgement of the Trustee to exemplify the Purposes of [REDACTED], exempt that [REDACTED] may not itself be a beneficiary of the trust; and

b) The rest and remainder "to designated relatives of the beneficiary or "to the issue of the Settlers then living by right of representation ."

Article (h) of the organization's Articles of Organization provides, in part, that the Association "may administer the disposal of any remainder of a trust to living family members and/or other organizations serving the mentally handicapped as provided in individual trust documents."

The dissolution clause as contained in your Articles of Organization provides in part, that "any assets of the Association (separate from assets held in representative or fiduciary capacity) that remain after providing for payment of all outstanding debt and other liabilities shall be transferred to the Association for Retarded Citizens of South Middlesex or to such similarly dedicated organizations created and operated solely for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code..."

The information submitted with your application also indicates that your organization will only agree to manage trusts with a minimum size of \$[REDACTED] for an as yet undetermined fee.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

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Like the organization described in Revenue Ruling 72-369, your organization enters into agreements to furnish managerial and consulting services on a fee for service basis. However, unlike the organization described in this particular Revenue Ruling, which provided services to exempt organizations, your organization provides Trust management services to its members who have created non-exempt trusts for the benefit of their mentally handicapped children. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

Like the organization described in Revenue Ruling 66-259, your organization provides managerial services for individual, non-exempt trusts, each of which provides for the reversion of principal and interest to the creator or descendants of the creator upon termination of the trusts. Trusts which retain a reversionary interest do not qualify for exemption under 501(c)(3) of the Code. Providing management services for non-exempt trusts, that do not qualify for exemption under 501(c)(3) of the Code, is not an activity warranting exemption.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.


If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,


District Director

Enclosure: Publication 892